



United Behavioral Health

Involuntary Evaluation and Treatment			Policy Identifier/Number: CM-11
Annual Review Completed Date: February 2018			
Policy Category: Government – Pierce Regional Support Network	Applicable Lines of Business: Medicaid	Entity/Plan: Optum Pierce Behavioral Health Organization	State: Pierce County, Washington
Approved by: Bea Dixon, Executive Director			Signature: 

Policy Statement and Purpose

Optum Pierce Behavioral Health Organization (BHO) facilitates involuntary evaluation and treatment of individuals who may be a danger to themselves or others, or who may be gravely disabled by mental illness.

To describe the involuntary evaluation and treatment process, access to necessary care, and the safeguarding of individual rights and possessions during the evaluation and treatment process.

Policy Audience and Applicability

This policy is applicable to the Optum Pierce BHO and benefits administered through the Washington State Department of Social and Health Services (DSHS) current Prepaid Inpatient Health Plan (PIHP).

Policy Definitions

N/A

Policy Provisions

1. When a peace officer or Designated Mental Health Professional (DMHP) escorts an individual to a facility, the DMHP shall take reasonable precautions to safeguard the individual's property including:
 - 1.1. Safeguarding the individual's property in the immediate area of the apprehension;
 - 1.2. Safeguarding belongings not in the immediate vicinity if there may be possible danger to those belongings;
 - 1.3. Taking reasonable precautions to lock and otherwise secure the individual's home or other property as soon as possible after the individual's initial detention.

Optum is responsible for adhering to all applicable state and/or federal laws governing activities within the scope of this policy, including the Mental Health Parity and Addiction Equity Act (MHPAEA) and the Health Insurance Portability and Accountability Act (HIPAA) privacy requirements, as well as the applicable requirements, standards and regulations as set forth by the Employee Retirement Income Security Act (ERISA), the Center for Medicare and Medicaid Services (CMS), the Department of Labor (DoL), and any applicable accrediting organizations.

2. Optum Pierce BHO maintains agreements with sufficient numbers of certified involuntary evaluation and treatment facilities to ensure that individuals eligible for BHO services have access to involuntary inpatient care. These agreements address BHO responsibility for discharge planning.
3. Optum Pierce BHO has DMHPs in place to perform the duties of involuntary investigation and detention in accordance with *RCW chapters 71.05* (adults) and *71.34* (minors), for individuals who may be a danger to themselves or others or who may be gravely disabled. The intent of *RCW chapters 71.05* and *71.34* is:
 - 3.1. To prevent inappropriate, indefinite commitment of mentally disordered persons and to eliminate legal disabilities that arise from such commitment;
 - 3.2. To provide prompt evaluation and timely and appropriate treatment of persons with serious mental disorders;
 - 3.3. To safeguard individual rights;
 - 3.4. To provide continuity of care for persons with serious mental disorders;
 - 3.5. To encourage the full use of all existing agencies, professional personnel, and public funds to prevent duplication of services and unnecessary expenditures; and
 - 3.6. To encourage, whenever appropriate, that services be provided within the community.
4. Optum Pierce BHO also has DMHPs in place to perform the duties of involuntary investigations and detentions in accordance with *RCW 10.77* for individuals who may have had criminal charges dismissed due to being not competent to stand trial:
 - 4.1. The individual has had a non-serious misdemeanor dismissed due to being not competent to stand trial;
 - 4.2. The individual had a Forensic Evaluation which recommended a DMHP evaluation before release from incarceration; and
 - 4.3. The individual is found to be a substantial danger to other persons or to present a substantial likelihood of committing similar criminal acts jeopardizing public safety or security.
5. Optum Pierce BHO delegates responsibility for implementation of the Involuntary Treatment Act (ITA) to its contracted network providers including ITA court-related services. Only DMHPs may make involuntary evaluation and treatment determinations, as specified in the Optum Pierce BHO Policy titled, *AD 10 -Designated Mental Health Professionals (DMHP)*.
6. Optum Pierce BHO requires provider agencies to inform the BHO of single bed certifications that have been obtained and provide the necessary documentation, in accord with procedures established by the DSHS in WAC 388-865, and published in a document titled *Community Psychiatric Inpatient Instructions and Requirements*.
7. Optum Pierce BHO Care Managers and Discharge Planners work in cooperation with providers and DMHP to coordinate the discharge of individuals from inpatient psychiatric units on Conditional Release (CR) or a Less Restrictive Alternative (LRA) court order. Providers are further required to:
 - 7.1. Keep a list of all individuals on CR or LRAs;
 - 7.2. Provide a copy of individual rights and responsibilities to the individual; and
 - 7.3. Monitor each individual's progress in accordance with the conditions of the court order.
8. Individuals may be detained for up to 14 days; the individual may be discharged at any time during the 14 days when stabilized.

- 8.1. In an individual is not stabilized enough to be ready for discharge within the 14 day commitment period, the MHPs at the facility where the client is receiving treatment may file a new petition for up to 90 days in accordance with RCW 71.05.
9. Request for an involuntary evaluation may be received from a variety of parties such as family members, coworkers, neighbors, police, professionals, or others who have first-hand information about the individual's behavior. The DMHP is required by law to judge the reliability and credibility of the party requesting the evaluation.
 - 9.1. If a DMHP has evaluated the individual and decided not to detain him or her, an immediate family member, legal guardian, or conservator may petition the superior court under *Joel's Law*, giving additional information regarding their belief that the individual should be detained.
 - 9.1.1. Immediate family members are: the spouse, domestic partner, child, stepchild, parent, stepparent, grandparent, or sibling.
 - 9.1.2. A *Joel's Law Petition for Initial Detention* may be obtained from the clerk of the county's Superior Court.
 - 9.2. If a requested DMHP evaluation has not occurred within 48 hours of the request, a *Joel's Law Petition* may be made.
10. The DMHP is to advise the individual of his or her civil rights including the right to remain silent and the right to an attorney.
11. Options for involuntary evaluation and treatment include:
 - 11.1. 72-Hour Detention
 - 11.1.1. If the individual is determined to have a mental disorder which causes him or her to be imminently gravely disabled or dangerous to self/others, and if he/she refuses voluntary care, and if there are no less-restrictive alternatives, the DMHP may sign legal papers to detain the individual for up to 72 hours for evaluation and treatment. The individual is then transferred to an Evaluation and Treatment facility.
 - 11.2. Non-emergent Detention
 - 11.2.1. When no imminent danger exists, but other grounds, such as grave disability, are present, the DMHP may go to court directly and request that the judge determine whether cause exists to detain the individual for 72 hours on a non-emergent basis. When a non-emergent detention is granted by the court, the court provides an order to immediately take the individual into custody and detain the person.
 - 11.3. 14-Day Detention and Probable Cause Hearing
 - 11.3.1. Once admitted to an Evaluation and Treatment facility, the individual is to be evaluated by a physician or psychiatric ARNP and another mental health professional (MHP) within the first 24 hours.
 - 11.3.2. If the facility determines that further care is necessary, the physician or psychiatric ARNP and MHP are to file a petition in accordance with the court filing schedule requesting up to 14 days of involuntary treatment.
 - 11.3.3. A "probable cause" hearing is held before a Superior Court Commissioner.
 - 11.3.4. The prosecuting attorney is to have witnesses at court or available by phone and the department of assigned counsel is to represent the individual who is present at the hearing and who can cross-examine witnesses.

If the physician or psychiatric ARNP and the MHP determine that further care is not indicated, the individual may be discharged.

- 11.3.5. If the physician/psychiatric ARNP and MHP determine that the individual meets the criteria for Good Faith Voluntary treatment and the individual agrees to voluntary treatment, no hearing will be held.
- 11.4. 14 Day, 90-Day, or 180-Day Detentions
 - 11.4.1. The Commissioner may order up to 14 days of inpatient involuntary treatment, or may dismiss the case and discharge the Individual, or may order 90 days of less restrictive care on an outpatient basis.
 - 11.4.2. When the Evaluation and Treatment facility physician/psychiatric ARNP and MHP assess that the individual's acute symptoms have subsided and the individual has stabilized, they may discharge the Individual prior to the end of the 14-day order.
 - 11.4.3. If care is needed beyond the 14 days, another petition may be filed requesting up to 90 days treatment.
 - 11.4.4. Once a 90-day petition has been filed, the Individual may demand a jury trial and the state's burden of proof shifts from "preponderance of the evidence" to "clear, cogent and convincing evidence," which offers more protection for the Individual from inappropriate long-term commitment.
 - 11.4.5. All long-term inpatient care for individuals who have 90-day and 180-day court orders for involuntary treatment takes place at a state hospital. Subsequent commitments for 180 days of inpatient or outpatient care also require a court hearing.
- 11.5. Less Restrictive Alternative (LRA)
 - 11.5.1. An individual may be ordered to a Less Restrictive Alternative outpatient order. Individuals on less restrictive orders are assigned a case manager who shall work with the individual throughout the 90- or 180-day order.
 - 11.5.2. The DMHP may, at the end of the court order, evaluate whether the individual continues to require treatment or should be released from the order.
 - 11.5.3. Also, at any time during treatment, the individual may be released from court-ordered treatment if the individual is determined to no longer need services. The DMHP must advise the court if the individual is to be released from treatment.
 - 11.5.4. Optum Pierce BHO monitors provider agencies with compliance regarding CR and LRA requirements through the clinical and administrative on-site review process.
- 12. The DMHP or the MHP at the Evaluation and Treatment facility facilitates the request for *Single Bed Certification* to Western State Hospital for providers when an Individual receiving involuntary inpatient psychiatric treatment requires services not available at the psychiatric facility, or when such a transfer would facilitate efficient transition and continuity of care in the community.
 - 12.1. The Single Bed Certification requests an exception from the DSHS to treat an adult on a 72-hour detention, or 14 day commitment, in a facility that is not certified under WAC 388-865, or for a maximum of thirty days to allow the facility to provide treatment on a 90-day or 180-day inpatient involuntary commitment order.
 - 12.2. DMHPs or the MHP at the E&T submits a written request to Western State Hospital coordinator for single bed certification. Amendment WSR 09-02-030 requires that the request must be submitted and approved prior to the commencement of the order.

- 12.3. The request is to describe why the Individual meets at least one of the following criteria:
 - 12.3.1. The Individual requires services that are not available at the state hospital;
 - 12.3.2. The Individual is expected to be ready for discharge from inpatient services within the next thirty days and being at the facility would facilitate continuity of care.
 - 12.3.3. As described in *WAC 388-865*, the Individual can receive appropriate evaluation and treatment in a residential facility as defined under *WAC 246-337* and the certification will only be to such a residential facility.
 - 12.3.4. Single Bed Certifications will not be issued solely for the purpose of boarding due to a lack of available psychiatric beds. If the hospital attests to their willingness and ability to provide treatment to the individual, an SBC may be granted.
 - 12.3.5. As described in the 207 SBC Section of the DMHP Protocol: Immediate availability of a certified evaluation and treatment bed will not be a factor in determining whether or not to conduct an investigation, nor shall it influence the determination if an individual meets detention criteria.
 - 12.3.6. If no resources are available and the Individual meets detention criteria, the DMHP will follow BHO and county practices as follows:
 - 12.3.6.1. Pursue resources (Certified E&T beds) in counties within close proximity;
 - 12.3.6.2. Locate and secure Certified E&T beds elsewhere within the state;
 - 12.3.6.3. Optum Pierce BHO requires that DMHPs contact (and attest to having contacted) all possible Evaluation and Treatment facility options in the state prior to pursuing Institution for Mental Disease (IMD) beds. Once it has been determined that the only beds available are the IMD beds, the DMHP may request the use of one of these resources;
 - 12.3.6.4. If no IMD beds are available for a Pierce County resident, the DMHP is authorized to seek a Single Bed certification from the Recovery Response Center in Fife, WA under the *WAC 388-865*, provision that states: The consumer can receive appropriate evaluation and treatment in a residential treatment facility as defined in chapter *246-377 WAC*, and the single bed certification will be only to that facility;
 - 12.3.6.5. In accordance with *WAC 388-865*, any individual who is given a Single Bed Certification to the Recovery Response Center must be transferred to an evaluation and treatment facility as soon as a bed becomes available;
 - 12.3.6.6. If a DMHP exhausts all above options and an E&T bed is still unavailable, the DMHP cannot legally detain the individual. However, in consideration of the federal **Emergency Medical Treatment and Active Labor Act (EMTALA)** the DMHP may detain the person to the hospital with the hospital's agreement. The DMHP and Crisis team contractor will leave the person in the custody of the facility while continuing to find a care facility to move the person to as quickly as possible. If this cannot be completed within 72 hours, the DMHP will proceed with filing the 14-day petition;
 - 12.3.7. If the individual does not meet the detention criteria or the DMHP does not respond to a request for evaluation, DMHPs are required to inform families

about *Joel's Law*. The process is similar to non-emergent detention as the court has the authority and may issue an order to detain.

- 12.3.7.1. The family files a petition with the court;
- 12.3.7.2. The Court reviews the petition within the next judicial day, including the DMHP evaluation and supporting documentation;
- 12.3.7.3. The Court will make a decision within 5 judicial days of the review to either grant or dismiss the petition.

13. The Western State Hospital coordinator for single bed certification is to give the DMHP or the MHP at the E&T written notification of their decision.

Related Policies, Procedures & Materials

- Pierce Behavioral Health Organization policy: CM-14 - *Less Restrictive Alternative*
- Pierce Behavioral Health Organization policy: AD-09 - *Evaluation and Treatment Facility Certification*
- Pierce Behavioral Health Organization policy: AD 10 - *Designated Mental Health Professionals (DMHP)*

Attachments

N/A

Approval History

- Policy created and effective: July 2009
- Policy and Procedure Committee review and approval: 09/28/2009
- Policy and Procedure Committee review and approval: 08/23/2010
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